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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DARYL EUGENE NEY, Defendant and Appellant.	A138548 (Lake County Super. Ct. No. CR-930572)

Defendant Daryl Eugene Ney appeals the prison sentence imposed after he pleaded no contest to mayhem with personal use of a deadly weapon. (Pen. Code, §§ 203, 12022, subd. (b)(1).)[1] His attorney has asked this court for an independent review of the record to determine whether there are any arguable issues. (*Anders v. California* (1967) 386 U.S. 738, 744; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was informed of his right to file a supplemental brief, which he has not done. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

Factual and Procedural History[2]

On September 20, 2012, defendant and his live-in girlfriend were drinking at home with their guest, Michael Parenteau, when defendant accused Parenteau of sleeping with his girlfriend. The two men "began to fight inside the house and eventually ended up

[1] All further section references are to the Penal Code.

[2] The recitation of the facts is drawn from the factual summary contained in the probation report.

outside." Parenteau tried to escape but is "disabled," "cannot run well," and "got caught up on a fence trying to leave the residence." Defendant grabbed a kitchen knife from the house and ran up to Parenteau, saying "I'm going to kill you, it's not over yet." Defendant stabbed Parenteau in the abdomen. The police arrived to find Parenteau lying on the ground, bleeding, and in extreme pain. He was airlifted to a hospital where it was found that he suffered a three-inch abdominal laceration that punctured his gallbladder, necessitating its surgical removal. Doctors told Parenteau he would have died without immediate medical attention. Parenteau was hospitalized for four days and, months after the stabbing, was still experiencing digestive problems due to removal of his gallbladder.

Defendant was charged with attempted murder (§§ 187, 664), mayhem (§ 203), assault with a deadly weapon (§ 245, subd. (a)(1)), and battery with infliction of serious bodily injury (§ 243, subd. (d)). It was further alleged that defendant personally used a deadly weapon (a knife) in the commission of each offense (§ 12022, subd. (b)(1)) and inflicted great bodily injury in committing attempted murder and battery (§ 12022.7, subd. (a)).

The court appointed a deputy public defender to represent defendant. On January 29, 2013, defendant entered a negotiated no contest plea to mayhem with personal use of a deadly weapon in exchange for which all remaining charges were dismissed. (§§ 203, 12022, subd. (b)(1).) Defendant was promised a maximum prison term of nine years. Defense counsel stipulated that there was a factual basis for the plea and defendant waived his constitutional rights by signing a written form advising him of those rights and the penal consequences of his plea. The court accepted the plea after orally questioning defendant to confirm that the plea was entered knowingly and voluntarily.

The court referred the matter to a probation officer for a sentence recommendation and report. The probation officer reported that defendant has a long criminal record dating back to 1987 with arrests for offenses that include battery, exhibiting a firearm, criminal threats, stalking, and spousal abuse. The report also noted that defendant has a history of alcohol and drug abuse and a diagnosis of schizoaffective disorder. The probation officer reported that "defendant's prior performance on probation was

unsatisfactory." After discussing criteria affecting probation and circumstances in aggravation and mitigation, the probation officer recommended a prison sentence of nine years.

At the March 18, 2013 sentencing hearing, the court stated that it had read and considered the report and gave counsel an opportunity to speak. The court observed that probation may not be granted where a defendant uses a deadly weapon "[e]xcept in unusual cases." (§ 1203, subd. (e)(2).) The court determined that defendant's circumstances did not present an unusual case and denied probation. The court stated: "Even if there were no limitations on granting probation his probation would be denied. His prior convictions are numerous and increasing in seriousness. His prior performance on probation was poor." The court weighed the circumstances in aggravation and mitigation and sentenced defendant to the upper term of eight years for mayhem and a consecutive term of one year for weapon use. The court imposed various fees, fines, and assessments totaling $160 and a restitution fine of $2,160. The court awarded defendant credit for the 180 days he spent in local custody plus 27 days of conduct credit. The conduct credit was limited to 15 percent because defendant was convicted of a violent crime. (§ 2933.1, subd. (a).) Defendant filed a timely notice of appeal on April 29, 2013. The notice states that the appeal is based on the sentence or other matters occurring after entry of the plea. Defendant did not request a certificate of probable cause to challenge the validity of the plea or other matters occurring before sentencing.

Discussion

Defendant admitted the sufficiency of the evidence establishing the crime by entering a plea of no contest and therefore is not entitled to review of any issue that goes to the question of whether he is guilty or not guilty. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Defendant did not obtain a certificate of probable cause and thus may not contest the validity of his plea. Thus, only issues relating to matters arising after the plea was entered are cognizable on appeal. (§ 1237.5; Cal. Rules of Court, rule 8.304(b)(4).)

We find no error with regard to the sentence imposed. The court sentenced defendant to a term authorized by law and compliant with the terms of the negotiated disposition. Defendant was represented by counsel throughout the proceedings and we find no indication in the record of ineffective assistance of counsel. We find no error in the trial court proceedings and no arguable issues for review.

Disposition

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuiness, P.J.

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Siggins, J.